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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

B.J., Respondent, v. H.S.B., Appellant.	B284760 (Los Angeles County Super. Ct. No. 17STRO00578)

APPEAL from an order of the Superior Court of Los Angeles County, Phillip A. Iadevaia, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Offices of Daniel Bald and Daniel M. Bald for Appellant.

B.J., in pro. per., for Respondent.

H.S.B. appeals from the civil harassment restraining order granted in favor of her niece, B.J., arguing she did not stipulate to having a temporary judge hear the matter, and that her due process rights were violated when the court failed to hear all relevant testimony, prevented appellant from cross-examining respondent, and denied her a continuance after her counsel was unavailable to conduct the hearing. And, for the first time in her reply brief, appellant contends substantial evidence does not support the order. We conclude appellant has forfeited any claim of error, and that her claims also fail on their merits. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 20, 2017, respondent filed a request for a Civil Harassment Retraining Order protecting herself and her five-year-old daughter, S.J., from appellant. According to the declaration in support of the requested order, appellant is respondent's maternal aunt. Both appellant, and respondent's mother, M.R., had harassed, threatened, and stalked respondent and S.J. Appellant was respondent's guardian when she was growing up, after respondent was removed from M.R.'s care because of severe abuse. Nevertheless, appellant "aided" M.R. in "abducting" and "keeping" S.J. against respondent's wishes. For example, appellant and M.R. took S.J. from respondent's home, without her consent. They frequently trespassed on respondent's property, and upon school grounds to see S.J. When respondent allowed S.J. to visit appellant and M.R., they would not return her as agreed upon, and would lie about her whereabouts.

The court granted a temporary restraining order, and continued the matter for further hearing on July 11, 2017.

Appellant opposed issuance of a restraining order, saying she loves respondent and S.J. and has "taken care of both of them over the years."

Appellant was represented by Lottie Cohen at the July 11, 2017 hearing. The parties stipulated to having Commissioner Laura Hymowitz hear the case. At the hearing, appellant informed the court that respondent had filed an identical request for an order against M.R., which was being heard by a different court, and that M.R. had a pending family law case seeking grandparent visitation. Appellant requested a continuance of the hearing, until mediation in the family law case occurred. The hearing was continued until July 27, 2017.[1]

On July 17, 2017, appellant's counsel filed a substitution of attorney, reflecting that appellant would be representing herself in the proceedings.

On July 27, 2017, Attorney Shadi Sed filed a "Notice of Limited Scope Representation" purporting to represent appellant at the July 27, 2017 hearing only.

At the July 27 hearing, Ms. Sed told the court that she "requested priority" for the hearing because "there is another matter happening upstairs." She asked "if we can do a continuance on this matter." Respondent's counsel was not in court. The court asked, "Can we get an agreement without other counsel if you want to continue it?" Ms. Sed informed the court that respondent's counsel was appearing on another matter in

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[1] Respondent has asked us to take judicial notice of several documents and transcripts relating to the other court cases. Because these documents are not relevant to this appeal, we deny her request.

another courtroom, and would not be able to appear in this case until 10:30 a.m. Ms. Sed represented "I am not going to be able to be here" at that time. A discussion was then held off the record.

When the court recalled the matter on the record, Ms. Sed was not present. When the court inquired as to Ms. Sed's whereabouts, appellant responded, "I am the defense." The clerk informed the court, "Defense counsel subbed out, so she's now representing herself." However, appellant protested "I'm not going to represent myself without my lawyer." It appears that a substitution of attorney was filed, but it was not designated in the record on appeal, and has been omitted from the clerk's transcript.

Respondent represented that her attorney was in another courtroom seeking an order against M.R. The court "put [the case] on last call."

When the case next recalled, respondent's counsel was present, and the clerk reminded the court that appellant was representing herself. Appellant did not ask for a continuance, and the court ordered that the case would proceed after the lunch break.

When the hearing commenced, both respondent and appellant were sworn in. Respondent testified that appellant and her mother came to her home and took S.J. from her babysitter without respondent's consent, and that they went to S.J.'s school even though they are "not on the list." The court then excluded witnesses from the courtroom. (M.R. was there as a witness for appellant, as was respondent's babysitter.)

After the hearing was underway, appellant's son, who is an attorney, attempted to make an appearance on behalf of

appellant. Appellant protested, "I don't have an attorney. You go as a witness." Appellant's son clarified, "You don't want me as your attorney?" Appellant responded, "No. Go as a witness. Thank you." She explained, "That's my son."

The hearing continued, and respondent testified to appellant's conduct, such as repeatedly demanding that respondent give her custody of S.J., showing up uninvited at her home, and making false allegations to the Los Angeles County Department of Children and Family Services. Respondent presented a number of documents supporting her allegations. The record does not reflect whether these exhibits were shown to appellant. However, appellant never complained that she was not permitted to see any of the exhibits.

Appellant testified and denied the allegations, and presented a number of exhibits showing how she had financially supported respondent and S.J. When appellant concluded her testimony, she stated that she loves respondent, and "[t]hat's all I can say. [¶] . . . . [¶] . . . I don't want anything else. . . ." Appellant never attempted to call any witnesses to testify in support of her defense.

The court issued the restraining order. Appellant did not object or insist that she had any other evidence to present.

The minute order for the July 27, 2017 hearing reflects "It is stipulated by the parties that Phillip Iadevaia may hear this matter as Judge Pro Tem. Stipulation and Order Appointing Member of the State Bar is signed this date."

DISCUSSION

Appellant contends the trial court abused its discretion by denying her due process rights in a number of ways. She contends the court "failed to hear all relevant testimony," because

it did not take the testimony of all the witnesses who appeared at the hearing. She also contends the court "limit[ed] [appellant] in her defense by not allowing her to cross examine respondent or examine the evidence produced against her and chose not to take an active role in developing the facts of the case." Lastly, the court failed to grant appellant a continuance "because her counsel had left after previously informing the court that she had requested priority and that [appellant] informed the court that she did not want to proceed in propria persona." Appellant appears to contend that she did not stipulate to having the case heard by a temporary judge.

These claims of error have been forfeited, because appellant never once complained about any procedural aspect of the hearing, and the record simply does not support her claims of error. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486 [points not raised in the trial court will not be considered on appeal].) Moreover, appellant's briefs do not contain a single citation to the record in support of the factual assertions made in the analysis section, waiving any claim of error. (Cal. Rules of Court, rule 8.204(a)(1)(C) [an appellant must "[s]upport any reference to a matter in the record by a citation"]; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [failure to support an argument with citations to the record waives any claim of error on appeal].) Further, appellant failed to provide a complete record, including a substitution of attorney form filed on July 27, 2017. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 [failure to provide an adequate record prohibits appellate review].) In any event, the claims fail on their merits.

Our review of the record reveals that the trial court did nothing to limit appellant's defense. The court allowed her to

participate fully in the hearing. It took her testimony and reviewed her exhibits. There is no indication in the record that she was not permitted to review respondent's exhibits. The court was not required to prompt appellant to ask questions of respondent; it was not required to remind her to call witnesses on her own behalf. (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [in pro. per. litigants are held to the same standard as attorneys].)

We also find the court did not abuse its discretion when it declined to continue the hearing. Initially, once her limited scope attorney failed to appear in court, appellant told the court she was representing herself. She later said she did not want to proceed without counsel, but then she assented to the hearing, refused her son's representation, and repeated she would proceed without representation. Although her limited-scope counsel requested a continuance when the case was first called, appellant never once argued that the matter should be continued so she could obtain new counsel. Accordingly, there was no abuse of discretion. (*Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 530 [courts have broad discretion to deny a request for a continuance].)

Appellant asks that we augment the record to include a declaration of Ms. Sed describing events that occurred off the record and an exhibit. We deny the request. We may not consider evidence outside the record of proceedings before the court. Without a reporter's transcript, the only way to offer evidence of proceedings in the trial court is an agreed or settled statement. (Cal. Rules of Court, rules 8.120(b)(2), (b)(3), 8.134, 8.137.)

Regarding the authority of the temporary judge to preside over the case, the court's minutes reflect that the parties stipulated to having the case heard by Mr. Iadevaia. Nothing in the record supports appellant's claim to the contrary.

Lastly, we decline to consider appellant's argument that the restraining order is not supported by substantial evidence, as it was raised for the first time in her reply brief. (*REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500 [the appellate court will not consider points raised for the first time in a reply brief].) And, in any event, the facts described *ante* provide substantial evidence in support of the order. (Code Civ. Proc., § 527.6, subd. (b)(3); *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1110 [discussing substantial evidence standard of review].)

DISPOSITION

The order is affirmed. Respondent shall recover her costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.